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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,950	03/15/2001	Rodney Senior	13620	3634
27717	7590	12/13/2006	EXAMINER	
SEYFARTH SHAW LLP 131 S. DEARBORN ST., SUITE 2400 CHICAGO, IL 60603-5803			FADOK, MARK A	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/805,950

Applicant(s)

SENIOR, RODNEY

Examiner

Mark Fadok

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-8,10,11 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) 26,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-8,10,11,27 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Arguments

The examiner is in receipt of applicant's response to office action mailed 5/3/2006, which was received 9/6/2006. Acknowledgement is made to the amendment to claims 6,7 and 8, the cancellation of claims 1-5,9 and 12-25 and the addition of claims 26-30. The examiner has carefully considered the amendment and arguments provided by the applicant and find them to be convincing, however after further searching a new grounds of rejection is provided which was necessitated by amendment.

Election/Restrictions

Newly submitted claims 26,29 and 30 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 26 and 29 include summing and additional purchase quantity and 30 includes a "single bulk quantity account balance for each commodity".

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 26,29 and 30 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

Claims 6 and 26 are objected to because of the following informalities: the lettering of paragraphs a,b,c ect. is not sequential. Appropriate correction is required.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8,10,11,27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Tommelleo, herein referred to as Priceline.com. and further in view of Official Notice

In regards to claim 6, Walker discloses a method of electronically transacting purchase and redemption of a at least one tangible commodity (abstract) which comprises:

- a) providing an electronic system for purchasing tangible commodities over a communication network and which system includes a computer database containing commodity information concerning at least one product which may be purchased at a current time purchase price, and which purchase price is locked-in at time of purchase, for at least partial consumption or use at a future date (FIG 2A, FIG 9E and FIG 17);
- b) establishing an account for the purchaser (FIG 14);
- c) establishing an account balance for each commodity (FIG 14);
- d) authorizing the purchaser to purchase a quantity of at least one tangible commodity from the electronic system (Fig 14)and;
- e) electronically accessing the electronic system (FIG 26A);
- f) purchasing from said computer database a first purchase quantity of a selected tangible commodity at the current time purchase price reflected in said computer database for redemption of at least a portion of the first purchase quantity of the selected commodity at a future date at the locked-in purchase price (FIG 26A);
- f) storing data in said computer database for the current account balance in an electronically accessible format (Fig 14); and
- g) electronically accessing said computer database and redeeming at least a portion of the current account balance of the selected commodity (FIG 14); and

Walker teaches a method for purchasing a product at a locked in price and redeeming the purchase at a later date. Walker also teaches maintaining an account. Walker however, does not specifically mention that a commodity is purchased where only a portion of the commodity is redeemed. Priceline.com teaches purchasing gas at a set price for redemption in increments at a later date. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Walker selling commodity products that can be redeemed in increments, because buying gas through priceline.com improve sales since customers are more likely to buy other products.

The combination of Walker and Priceline.com suggest that an account balance is reflected to show the balance remaining (purchase gas up to 50 gallons and use a credit card to redeem the gas), but this is not specifically mentioned. The examiner takes Official Notice that maintaining a balance of product not redeemed was old and well known in the art at the time of the invention. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in the combination of Walker and Priceline.com, maintaining a balance of the gas that was not redeemed, because this will allow the card to be used multiple times and not cause the purchaser to loose money on the unredeemed product, thus providing a service that will improve customer relations.

In regards to claim 7, the combination of Walker and Priceline.com teaches maintaining an account balance, but does not specifically mention that a portion of the

balance can be transferred to another. Transferring a portion of a users balance to another (see for example gift cards and child credit cards) was old and well known in the art that at the time of the invention. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include transferal capability, because this will provide for increased sales by permitting gift cards and child cards to be used with the invention.

In regards to claim 8, Walker teaches wherein the step of accessing and redeeming is performed at a plurality of locations (Fig 22).

In regards to claim 10, Walker teaches wherein the purchasing and redeeming steps are performed over a computer network (FIG 1B).

In regards to claim 11, Walker teaches wherein at least one commodity is a brand name commodity and the purchasing and redeeming steps are effected with the same brand name of the commodity (Fig 9B).

In regards to claim 27, Walker discloses a method of maintaining an account for purchase of at least one tangible commodity at a market price current at time of purchase and for delivery on-demand of the at least one tangible commodity regardless of market price current at time of delivery, the method including the steps of:

establishing an account in an electronic system for an individual user;

establishing a current balance for each commodity in the account;
accessing the account by the user;
transacting with the electronic system for delivery of a selected tangible commodity,
delivery being available on-demand at a plurality of specific locations;
adjusting the current balance for the selected commodity in response to the transacting (See response to claims 6-8,10 and 11).

In regards to claim 28, Walker teaches wherein the step of transacting includes at least one of

purchasing a purchase quantity of the selected commodity at a current market price to lock-in the market price for subsequent delivery and redemption, and
redeeming a redeemed quantity of the selected commodity at a subsequent date, the redeemed quantity being at least a portion of the current balance (See response to claims 6-8,10 and 11).

Response to Arguments

Applicant's arguments with respect to claims 6-8,10,11,27 and 28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including
After Final communications labeled
"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Fadok
Primary Examiner